IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4761 of 2000
with
CIVIL APPLICATIONS NOS.9928 of 2000 & 10127 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DABGAR BALDEVKUMAR CHETANKUMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4761 of 2000
MR SHAILESH C PARIKH for Petitioner
MS BR GAJJAR, ld.AGP for Respondents Nos.1 to 5
MR BG JANI for Respondent No. 6

2. Civil Applications Nos.9928 of 2000 & 10127 of 2001
MR BG JANI for applicant
MR SHAILESH C PARIKH for opponent no.1
MS BR GAJJAR, ld.AGP for opponents nos.2 to 6

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 20/09/2001

COMMON ORAL JUDGEMENT

The petitioner, in this petition under Article 226, has challenged the order of the Mamlatdar, Dabhoi dated 1.5.2000 Annexure.L and the order passed by the Deputy Secretary, Food and Civil Supplies Department, Gandhinagar, dated 4.2.2000 Annexure.M.

2. Perusing the order passed by the Mamlatdar, Dabhoi, it appears that the said proceedings were initiated by the respondent no.6-Naginbhai Kanjibhai Parmar challenging the order dated 6.7.1999 passed by the District Supply Officer, Vadodara, granting licence to run the Fair Price Shop to the present petitioner. The said order was challenged on the ground that the petitioner does not belong to Scheduled Caste community and therefore, he is not entitled to get the licence on priority basis. According to the respondent no.6, as per the Voters' List, the surname of the petitioner is "Bhojwani" and not "Dabgar". The Deputy Secretary, after hearing the parties, was of the opinion that enquiry is required to be made regarding the allotment of the Fair Price Shop granted to the petitioner. He accordingly by order dated 4.2.2000, allowed the application of the respondent no.6 and set aside the order dated 6.7.1999 passed by the District Supply Officer, Vadodara and remanded the matter with a direction to take fresh decision in the matter. The Mamlatdar, Dabhoi, in compliance of the said order dated 4.2.2000 passed by the Deputy Secretary, by order dated 1.5.2000 at Annexure.L, cancelled licence of the petitioner to run the Fair Price Shop and granted the same to one Shah Chandrakant Purshottambhai. As stated above, the petitioner has challenged both the orders.

3. It is the contention of the learned Counsel for the petitioner that the Mamlatdar could not have passed the order dated 1.5.2000 without hearing the petitioner and in any case till the enquiry is made and a fresh decision is taken in the matter.

4. This Court on 10.5.2000 issued Rule in the matter and stayed the operation of the order dated 1.5.2000 passed by the Mamlatdar, Dabhoi, cancelling the licence of the petitioner to run the Fair Price Shop. This Court, however, granted permission to the respondents to apply for vacation/modification of the order at any time even before the returnable date.

5. Neither the State nor the District Collector, nor the District Supply Officer, nor the Mamlatdar filed any affidavit for modification of the said order nor they have filed any affidavit. The respondent no.6 has filed Civil Applications Nos.9928 of 2000 and 10127 of 2001 for vacating the interim relief granted by this Court.

6. Heard learned Counsel appearing for the respective parties. Learned Counsel tried to argue on the merits of the case. However, I am of the opinion that it is neither desirable nor proper for me to decide the case on merits especially when the matter is remanded to the Advisory Committee of the office of the District Supply Officer for taking appropriate decision in the matter, where the parties will have the opportunity to point out everything about their respective cases including that they have a right to run the Fair Price Shop on the ground that they belong to Scheduled Caste/Baxi Panch. The Advisory Committee of the Office of the District Supply Officer will not only decide the cases of the petitioner as well as the respondent no.6 but also the cases of the candidates belonging to the said category who have in fact applied for the licence to run the Fair Price Shop. I am sure the said authority will take a just decision after hearing the concerned parties considering the material placed before it. In that view of the matter, I am of the opinion that no interference is called for in the matter more particularly with respect to the order dated 4.2.2000 passed by the Deputy Secretary, Food and Civil Supplies Department, Gandhinagar. In view of the fact that the petitioner has been allowed to run the Fair Price Shop for the interest of the public at large, the arrangement as prevailing today shall continue till appropriate decision is taken in the matter. The petition is partly allowed to the above extent and the Rule is made absolute accordingly. No order as to costs.

7. In view of the order as above passed in the main petition, no orders are required to be passed in Civil Applications Nos.9928 of 2000 and 10127 of 2001. Both the Civil Applications stand rejected accordingly.

Direct service is permitted.

20th Sept.2001 (K.R. Vyas, J.)

Sreeram.